IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTU CRIMINAL CONTEMPT PETITION NO.1 OF 2004.

VERSUS

1. Smt. Vijaya Mohan Patil
   Printer & Publisher,
   Gomantak Pvt. Ltd.,
   Gomantak Bhavan, Panaji,Goa.

2. Shri Anand Laxman Agashe,
   Chief Editor of
   "Gomantak", Gomantak Pvt. Ltd.,
   Gomantak Bhavan, Panaji, Goa.

3. Shri Jayant Sambhaji,
   Executive Editor of
   "Gomantak", Gomantak Bhavan,
   Panaji, Goa.

4. State of Goa,
   Through P.P., Panaji, Goa.

5. Shri Shekhar Mhadik. ... Respondents.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Additional Government Advocate for the Respondent No.4.

Mr. A. Kansar, Advocate for the Respondent Nos.1, 2, 3 and 5.

CORAM: S.A. BOBDE &
N.A. BRITTO, JJ.

DATE: 9TH JUNE, 2004.

ORAL JUDGMENT: **(PER BOBDE, J.)**

This is a Suo Motu action initiated by the Court, calling upon the respondents, in particular respondent Nos.1 to 3 and 5 to show cause why the said respondents should not be punished for committing criminal contempt of Court.

2. The respondent No.4 is the State of Goa. The respondent Nos.1 to 3 and 5 are hereinafter referred to as the Respondents. The respondent No.1 is the Printer and Publisher of the daily "Gomantak", published from Panaji. The second respondent is the Chief Editor and the third respondent is the Executive Editor of the said newspaper respectively. The respondent No.5 is the reporter whose report was published by the other respondents and has furnished the cause of action in this matter.

3. The contempt has arisen in this way. It appears that a Tibetian prisoner moved this Court for permission to use a pocket transistor since he could not understand the language of the newspaper which he was supplied. He moved the court in order to enable him to listen to the news in the Tibetian language. The court heard this matter and on 3rd February, 2004 granted Rule in the matter.

4. The respondent No.5 who was present in Court and reported about the proceeding, filed a report which was published by the other respondents. That report stated that this Court has granted permission to the prisoner to use a pocket transistor. The latter part of the report also attributed the reason why this court granted such permission. That reason, according to the

report, was that the Government Advocate could not pursuade the court that there would be a law and order problem if transistors were allowed in prison and since there was no law prohibiting the use of transistor in court.

5. There is no doubt about the fact and it is fairly not disputed on behalf of the respondents by their learned counsel that this Court did not grant any such permission, but merely issued Rule in the matter.

6. However, since this court took the view that it was a grossly inaccurate report, it initiated the present action for contempt of court. The learned counsel for the respondents fairly submitted that the respondents did not and have not at any stage disputed the facts that the news item is inaccurate in its material particulars namely that the court granted permission for the use of transistor. The learned counsel fairly accepted that this was a sheer mistake on the part of the reporter. In particular the learned counsel referred to the publication of the newspaper on 6th February, 2004 in which, upon realisation of the mistake, the newspaper "Gomantak" published a clarification that the impugned news item in question was inaccurate and that this Court has not granted any such permission. This news item was published

immediately upon realising the mistake.

7. The learned counsel for the respondents has thus not defended the news item or its inaccuracy. There is no attempt on the part of the respondents to justify the inaccuracy. They have plainly admitted to be a mistake. The respondent No.5, the news reporter who was present in court, has stated that he reproduced the proceedings as he understood them, and believed that the Court granted relief. According to the respondent No.5 he misunderstood the fact of admission of the matter as the fact that the court has granted the relief prayed for. He has further submitted that he was disabled by the court staff from verifying the actual record of the court, though there is no proof of this. He has thus submitted that he published the news item under the bonafide belief that what he was publishing is accurate. The respondent No.5 has tendered an unconditional apology to this court for the inaccuracy in the news report, as have the other respondents.

8. We have considered the matter at length and we are satisfied that the inaccuracy that has crept into the news report is unjustified and the result of sheer negligence on the part of the respondent No.5 in reporting that the court did something which in fact it

did not. There is no doubt that such inaccuracy has a deleterious effect on the administration of justice and certainly has a tendency to prejudice or interfere with the due course of the judicial proceedings. In fact, such a report might not only affect the judicial proceedings in question, but might induce a subordinate court to follow the example when the report pertains to an order of the High Court. It is clear that the news report was based on the mere impression of the Respondent No.5 who does not appear to have taken any trouble to verify his impression. It is in this sense, we are of the view that the news item in question would amount to criminal contempt of court.

9. While there is no doubt that the Press, like every citizen, has a right to fairly criticise and comment the court proceedings, the right is circumscribed by the duty to be fair and accurate. This is apparent from Section 4 of the Contempt of Courts Act, 1971 which reads as follows :-

> " 4. Fair and accurate report of judicial proceeding not contempt. - Subject to the provisions contained in section 7, a

> person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof. "

10. It follows from the above section that a person must publish a fair and accurate report of judicial proceeding or any stage thereof and cannot publish or make statements about something that has not happened or taken place in a judicial proceeding.

11. However, what remains to be considered next is the consequence of the act of the respondents, in particular the respondent No.5. The act does not seem to have been actuated by any malice or with a deliberate intention to lower the dignity of the Court. The respondents have published a clarification in the newspaper on the front page that the earlier news item was not accurate. They have also tendered an unconditional apology to this Court without any attempt to justify the mistake. Having regard to these circumstances, we are inclined to accept the apology which we consider to be bonafide and as showing a genuine repentance for a mistake committed.

12. In these circumstances, we discharge the show cause notice without taking any further action. Order accordingly.

S.A. BOBDE, J.

N.A. BRITTO, J.

sl.